

## **Addendum C**

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VIA FACSIMILE: 801.257.1800

Re: SCO v. IBM

Dear Todd:

This letter follows our telephone conversations about how to best address Judge Wells' concern regarding litigation-related public statements. Our concern is that any agreement to refrain from such public statements should include not just IBM, but also affiliates and consultants that directly or indirectly receive financial support from IBM. This letter lists several persons and entities that, we are told, receive direct or indirect financial support from IBM. We would ask you to confirm if this is true.

Of principal concern is the Groklaw web site. It appears that Groklaw was conceived and launched by *ibiblio.org* in response to SCO's original filing against IBM. A fundamental purpose of the Groklaw website is to criticize SCO's litigation claims and evidence. Groklaw was taken to entirely unacceptable levels during the February 6 hearing before Judge Wells when a member of the gallery surreptitiously uploaded live commentary about the judicial proceedings to the Groklaw web site while the hearing was in process. This commentary included disparaging comments about participants in the hearing. We have been told that IBM is a sponsor of Groklaw and/or its parent organization *ibiblio.org*. If so, the Court has a right to know this in considering the scope of any order regarding litigation-related public statements in this case.

We are also concerned about the statements about SCO's litigation claims made by Linus Torvalds, who is employed by the Open Source Development Labs ("OSDL"), which is funded principally by IBM. Because of Mr. Torvalds' position in the technology world, his comments about SCO's evidence in this case are given particular weight in industry and popular press.

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We are also concerned about the many litigation-related statements made by Eric Raymond, who claims to be a paid IBM consultant, and by Columbia Law Professor Eben Moglen, who also claims to be an IBM consultant. Mr. Raymond and Professor Moglen have been highly critical of SCO's litigation claims. If paid by IBM it is only fair that they, along with Mr. Torvalds, be included in the scope of any stipulation or order regarding litigation-related public statements.

It is unlikely that Judge Wells would allow IBM's indirect use or sponsorship of Groklaw, Linus Torvalds, Eric Raymond, Prof. Moglen or other consultants to publicly comment on SCO's litigation claims, while precluding a response from SCO. It is therefore necessary for us to gain more information about IBM's direct or indirect financial support for these people and entities before we can meaningfully address any kind of stipulation related to litigation-related public statements.

I will be out of the country until February 18, 2004. I would appreciate it if you could address this matter with Mark Heise or Brent Hatch as may be necessary during that period of time. Please let us know if IBM is willing to voluntarily provide the information requested above as part of our continued discussions to resolve this matter to the Court's satisfaction.

Thank you very much.

Yours truly,

  
KEVIN P. McBRIDE

cc: Chris Sontag  
Ryan Tibbitts  
Mark Heise  
Brent Hatch